S Kanara 2/55

1955

File No.

K

Legal DEPARTMENT

Examined E BRANCH

Subject:— Suits .. Kanara

C. S. No. 86 of 1954

D. K. Hegde and another ---- Plff.

V/S

The State of Bombay - - ---Deft

For a declaration that the Collectors order
dated 1st Aug. 1953 and the Mamlatdars notic
dated 4th Aug. 1953 calling upon the plffs h
pay Rs. 2000/- each to the Defendants is
null and ... and of no legal effect, etc.

P. 89/E

File No. S. Kanara 2/55

Std. Sectt Silp 24-B

2/55

IMMEDIATE.

No. 2225/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 27 - 9 - 1954.

Subject:- Civil Suit No. 86 of 1954.

Memorandum:

With reference to his ~~letter~~ telegram No. nil dated the 25th Sept. 1954, on the above subject, the District Government Pleader, Karwar is informed that the report of the suit as required under Rule 118 of the Law Officers Rules and the case papers have not yet been received in this office from the Collector. He is, therefore, requested to file the written statement from the Court records in consultation with the Collector if no further adjournment is granted. A copy of the written statement filed in the Court may be forwarded to this office for record.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Karwar

Copy forwarded with compliments to the Collector of Kanara with a request to give necessary instructions to the District Government Pleader and to forward the report as required under Rules 118 of the Law Officers Rules and case papers to this office, immediately.

Submitted for signature

27/9

~~S.E. (N.C.)~~

SS

hsp/18/11

Issued 27/9

Letter 13

To

The Remembrancer of Legal Affairs,
Bombay

No. 4905/Estt Karwar, 26th August 1954

Subject: Suits: Kanara
C.S 86 of 1954 filed by Shris P.K. Hegde and B.N.Ganeger of Mundgod against the State of Bombay

I am forwarding this report as required by Rule 118 of the Rules for the conduct of Legal Affairs of the Government.

Rule 118(1)

(i) The No. of the Suit is C.S. 86 of 1954 in the Court of the Civil Judge, Senior Division, Karwar

(ii) Date of institution:- 22-6-1954

(iii) The plaintiffs in this case are:-

(1) Shri Devappa Krishnappa Hegde and
(2) " Basavannappa Ningappa Ganiger of Mundgod. The suit is filed against the State of Bombay

(iv) The suit is filed for,

(1) Rs. 310-13-9 for court fees
(2) " 2305-13-9 for other purposes

(v) Date of first hearing : 27-8-1954

(vi) Notice under section 80 Civil Procedure Code was served on 10-2-1954

Rule 118(2) (a) The plaint is in English. A copy of the plaint is enclosed.

(b) A copy of the list of documents attached to the plaint is also enclosed.

(c) The circumstances under which lead to the suit are detailed in the plaint. Contents of para 1 of the plaint are admitted. A copy of the security bond (English translation) is enclosed.

As regards para 2 of the plaint, it is true that there was a net loss of Rs. 5,360-4-2 in respect of the shortages noticed in foodgrains when Smt.

Shri S.N.Bhat was serving as Godown Keeper, Mundgod The prosecution launched against Shri Bhat did not refer to this item of Rs. 5,360-4-2. The two prosecutions launched against Shri Bhat referred only to wrong totalling of paddy received on two or three different dates. The accused was acquitted on the ground that the wrong totalling was a bone-fide mistake and that there was no criminal intention. An appeal against the order of acquittal has already been recommended on the ground that the items of such wrong totals came to Rs. 305/13/- only and in view of innumerable such cases, the plea of incidental wrong totalling was not correct. It appears that this amount of Rs. 305-13-0 has already been credited to Government by Shri S.N.Bhat. This item of Rs. 305-13-0 has therefore, got nothing to do with the present suit.

As regards para 3 of the plaint, it is true that the Collector made an order on 1-8-1953 that the amount of the loss suferred by Government (to the extent of Rs. 5,360-4-2) should be recovered from Shri S.N.Bhat and also his sureties (the present plaintiffs). Accordingly, the Mamlatdar of Mundgod must have issued the order on 4-8-1953 calling upon the plaintiffs to pay Rs. 2,000/-

The original security Bond executed by Shri S.N.Bhat was for the total amount of Rs. 2,000/- The interpretation that each of the two sureties is liable to the extent of Rs. 2,000/- is therefore correct. It does not, however, mean that Government claims, in all, Rs. 4,000/- from both the plaintiffs. It only means that the sum of Rs. 2,000/- can be recovered from both together or from either of the two sureties.

The pay due to Shri S.N.Bhat had been

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been withheld by the Mamlatdar of Mundgod, as large amount was due from Shri Bhat.

The Collector had not called upon Shri G.N. Bhat to furnish a fresh security and therefore the plaintiff's allegation in para 3 is not correct. It is not also true that plaintiff No. 1 had been found to be not solvent for the amount of Rs. 2,000/-.

It is not true that plaintiff No. 2 had been discharged from his liability and that the village officers had even scored out his name as surety from any register. Even if there was such an act on the part of the Village Officers, it has not been brought to the notice of the Collector or of Government. No Officer duly authorised, had agreed to discharge plaintiff No. 2 from his liabilities.

Application dated 28-8-1953 made by plaintiff No. 1 was received by the Collector on 1-9-1953. There was no application dated 29-5-1953 as mentioned in plaint para 3. The application dated 28-8-1953 was rejected in January 1954 as pointed out in para 3.

As regards plaint para 4 , Rs. 305-13-9 appears to have been recovered as the loss caused to Government in foodgrains cambouflaged by short totalling or excess totalling.

Regarding plaint para 5, the main basis of the suit appears to be that Shri Bhat has been -- acquitted in the criminal case. But as put forth above, the two criminal cases referred only to small quantities of paddy shown less in totalling up, whereas the amount now claimed as loss caused to Givernment refers to other items. The plaintiffs cannot, therefore rely upon the order of acquittal. The security bonds is taken to cover any amount of loss that may be caused even by negligence. When the Court acquitted

Shri Bhat on the ~~consideration that~~ ground that there was no criminal intention, but that it was a pure accidental mistake in totalling, the plaintiffs -- cannot rely upon the judgment to exhonerate their liability, as the security Bond covers all the losses caused even by negligence. The ommission of the higher authorities in not detecting the defaulcation in time can ot ~~unjustified~~ justify they plea that the plaintiffs are exhonerated fro their liability. It is not true that Government have made any composition and have given time to Shri S.N.Bhat. All the grounds put forth in plaint para 5 are therefore denied. It is however. admitted that the maximum liability that can be enforced against both the plaintiffs is limited to Rs. 2,000/- , although the whole amount can be recovered from either of them.

As regards plaint para 6, it is a fact that notice under section 80 Civil Procedure Code had been issued to the Collector. But the plaintiffs are not entitled to any declaration that the Collector's order dated 1-8-1953 as null and void, or that the recovery proceedings started by the Mamlatdar of Mundgod under the orders from the Collector are illegal, or that the plaintiff is not entitled to any injunction -- restraining the Collector from recovering the amount to the extent of Rs. 2,000/- from both the plaintiffs or either of them.

Regarding plaint para 7, the amount of Rs. 306-13-6 was not recovered under the Collector's order dated 1-8-1953. It was an order of 14-2-1951. This is therefore an independent item of loss and it cannot be raked up now. This order was passed on 14-2-1951 whereas the suit refers only to the recovery proceedings started on 1-8-1953 and therefore appears to be time-barred. The recovery of Rs. --- 306-13-6 is perfectly legal and valid.

Hence the plaintiff is not entitled to any relief.

Rec'd 30/8

All the documents are sent herewith.

The lines of defence of the suit may kindly be sanctioned early, as it is reported by the District Government Pleader, Kanara that the Civil Judge, senior Division, Karwar is reluctant to grant more than three adjournment even in Government suits, as he says that he cannot make distinction between suits of private party and of Government.

Yours faithfully,

Collector of Kanara

II C

CIVIL SUPPLIES DEPT.
Date of Receipt 31
File No. 3 C
Serial No. 8557 1704 6

Through the Secretary to Government, Civil Supplies, Department, Bombay with ~~respects~~ compliments.

G. P. B.—(J) Y/342—5,500—5-53

APPENDIX I-B

(*See* Fin. R. 40)

Form of Personal Security Bond.

KNOW all men by these presents that I, Satyanarayan Narayan Bhat of Mundgod am held and firmly bound unto the Governor of Bombay (hereinafter referred to as the Governor which expression shall, unless excluded by or repugnant to the context, include his successors in office and assigns) in the sum of rupees two thousand (Rs. 2,000/-) to be paid to the Governor for which payment, well and truly to be made, I bind myself, my heirs, executors, administrators, and legal representatives by these presents.

WHEREAS the above bounden Satyanarayan Narayan Bhat was on the day of November 195x 1948 appointed to and now holds the office of Godown Keeper, Mundgod in the office of ----

And whereas the said Satyanarayan Bhat by virtue of such office is bound to collect

~~Supply Accounts Officers~~
~~Senior Supply Accountants~~
~~Supply Accountants~~
~~Deputy Supply Accountants~~
~~Assts Supply Accountants~~
~~Taluka Supply Accounts Clerks~~
~~Godown Managers~~
Godown Keepers
~~Cashiers~~
~~Godown Clerks~~
~~Other Subordinates~~

(Here describe the nature of the duties) and to keep and render true and faithful accounts of his dealing with all property and money which may come into his hands or possession or under his control, such accounts to be kept in the form and manner that may, from time to time be prescribed by duly constituted authority, and also to prepare and submit such returns, accounts and other documents as may from time to time be required of him.

And whereas the said Satyanarayan Narayan Bhat has, in pursuance of rule 40 of the Bombay Financial Rules, been called upon to execute a bond with two sureties in favour of the Governor in the abovementioned sum of rupees two thousand only (Rs. 2, 000/-) for the due and faithful performance by the said, Satyanarayan Narayan Bhat of the duties of his office, and of any other office requiring security to which he may be appointed at any time and of other duties which may be required of him while holding any such office as aforesaid and for the purpose of securing and indemnifying the Governor against all loss, injury, damage, costs or expenses which the Governor may, in any way, suffer sustain or pay, by reason of the misconduct, neglect, oversight or any other act of the said S.N.Bhat or of any person or persons acting under him or for whom he may be responsible.

Now the condition of the above written bond is such that if the said Satyanarayan Bhat has whilst he has held the said office of Godown Keeper, Mundgod aforesaid, always duly performed and fulfilled the duties of his said office and if he shall, whilst he shall hold the said office or any other office requiring security, to which he may be appointed, or in which he may act, always duly perform and fulfill all and every the duties thereof respectively and other duties which may from time to time be required of him while holding any such office as aforesaid and

shall duly pay into the Government Treasury at Mundgod all such moneys as are payable to Government and shall come into his possession or control by reason of the said office, and shall duly account for and deliver up all moneys, papers and other property which shall come into his possession or control by reason of the said office and if the said his heirs, executors or administrators shall pay or cause to be paid unto the Governor the amount of any loss or defalcation in the accounts of the said S.N.Bhat within 24 hours after the amount of such loss or defalcation, shall have been demanded from the said Satyanarayan Bhat by the - -- such demand to be in writing and left at the office or last known place of residence of the said Satyanarayan Narayan Bhat and shall also at all times indemnify and save harmless the Governor from all and every loss, injury, damage, costs or expenses which has been or shall or may at any times or time hereafter during the service or employment of the said S.N.Bhat in such office as aforesaid, or any such other offices aforesaid, be sustained. incurred, suffered or paid by the Governor by reason of any act, embezzlement, defalcation, mismanagement, neglect, failure, misconduct, default, disobedience, omission or insolvency of the said S.N.Bhat or of any person or persons acting under him or for whom he may be responsible, then this obligation shall be void and of no effect otherwise the same shall be and remain in full force.

And it is hereby further agreed that in the event of the death of the said Satyanarayan Narayan Bhat or on the final termination of the service of the said S.N.Bhat whether as such Godown Keeperas aforesaid, or otherwise or in the event of the said Satyanarayan Bhat ceasing to hold any office requiring security this bond shall remain with the for calendar months for recovering any loss, injury, damage, costs or expenses that may have been sustained, incurred or paid by the Governor owing to the act, neglect or default of the said S.N.Bhat or any such other person or persons as aforesaid and which may not have been discovered until after his death or the termination of his said service or his ceasing to hold any office for which the security was required.

Provided always that without prejudice to any other rights or remedies for recovering the loss or damage as aforesaid it shall be open to the Governor to recover the amount payable under this bond as an arrear of land revenue.

IN WITNESS whereof the said Satyanarayan Narayan Bhat has hereunto set his hand this 29th day of December 195 1949

Signed and delivered by the abovenamed in the presence of—

1) Krishnappa Timmappa Pattanshetti
2) Shankar Laxman Mallapur

(Signature) Sd. S:N.Bhat

1

Before me

2 Sd. X X. X

for Mamlatdar of Mundgod

29-12-1949

9 11

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We (1) Devappa Krishnappa Hegdeof Mundgod (2) Basavannappa Ningappa Ganiger hereby declare ourselves sureties for the abovesaid Satyanarayan Bhat that he shall do and perform all that he has above undertaken to do and perform and in case of his making default therein, we hereby and bind ourselves jointly and severally to forfeit to the Governor the sum of (2,000/-). two thousand only in which the abovesaid Satyanarayan Bhat has bound himself, or such other lesser sum as shall be deemed to be sufficient by the Collector Kanara *to cover any loss or damage which Governor may sustain by reason of such default.

And we agree that the Governor may without prejudice to any other rights or remedies of the Governor recover the said sum as an arrear of land revenue

And we also agree that neither of us shall be at liberty to terminate his suretyship, except upon giving to the said S.N.Bhat *six calendar months' notice in writing of his intention so to do, and our joint and several liability under this bond shall continue in respect of all acts. embezzlements, defalcations, mismanagements, neglects, failures, misconducts, defaults, disobedience, omissions and insolvencies on the part of the said S.N.Bhat until the expiration of the said period of six moths.

Dated this the 29th day of December 1949

Signature of sureties in the presence of—

1 Shankar Laxman Mallapur

2 Manohar Umanath Arur

Sd. Devanna Krishnanna Hegde

Sd. Basavannappa Devappa Ganiger

(Signature)

Before me

Sd. X X X

for Mamlatdar of Mundgod

In the presence of—

1

2

(Signature)

* To be filled in

Civil Suit No. 86 of 1954 11 13

In the Court of the Civil Judge, S.D.Karwar

1. Devappa Krishnappa Hegde, Hindu
aged 58, ryot, resident of Mundgod

2. Basavannappa Ningappa Ganiger, Hindu,
Aged 40, ryot, resident of Mundgod - Plaintiffs

Versus

The State of Bombay - Deft

Claim -Rs. 310-13-9 cor court fees and
Rs. 2305-13-9 for other purposes

The plaintiff begs to state as follows:-

1. The plaintiffs had stood sureties for one Satyanarayan Narayan Bhatk who was working as Govt Godown Keeper at Mundgod and undertook responsibility to the extent of Rs. 2,000/- for his due submission of accounts and due performance of his duties in that capacity. They executed the security bond to the Mamlatdar of Mundgod on 29-12-1949. This bond contains all the details of the duties to be performed by him as Godown Keeper and the circumstances the Pltfs were to be held liable.

2. The said Godown Keeper was working in that capacity at Mundgod. It is alleged against him that during the period from 7-11-1948 to 5-6-1950 he did not maintain proper accounts, nor kept bill cards and correct record of test weighment nor specified the results of each weighed bag, that he arbitrarily showed the shortage in the total no of bags issued to the miller and ommitted to obtain attestations of the miller or his drivers to the test weighments made at the time of issuing paddy to the mills. It is urged that he had thus caused a net loss of Rs. 5360-4-2 to Government. It appears that he was prosecuted for offences under sections 409 and 477 A of I.P.C But it is learnt that the prosecution was withdrawn. It is now further learnt that his next prosecution has recently ended in his acquittal.

3. Thereafter, the Collector passed an order on 1-8-1953 that the amount of loss sufferred by Govt should be recovered from the said S.N.Bhat and also from the plaintiffs to the extent of their liabilities under the above mentioned security bonds. Accordingly, the Mamlatdar of Mundgod issued a Notice on 4-8-1953 to each of the pltfs to produce Rs. 2000/- in the Mundgod Treasury by the 12th idem. In reply, each of the plaintiffs addressed a communication to him on 11th idem stating that he had not undertaken the liability to the extent of Rs. 2,000/- and that he was not found solvent for that amount. Plaintiff No. 1 added that the said S.N.Bhat was on that account called upon to furnish fresh security and that in the mean time his 2 month's salary was withheld by the mamlatdar. Pltf No. 2 alleged that he was discharged from the liability and that the village officer had even acored out his name as surety from the register. Each of the pltfs was informed by the mamlatdar by his letter dated 13th idem that he was unable to do anything in the matter and that if so advised, he should approach the Collector. Each, therefore, made a similar application to the Collector on 29-5-1953 which reached him on 2-9-1953. Plaintiff No. 1 however got no reply whatever, but plaintiff No. 2 got a reply on 18-1- that his liability for Rs. 2000/- as surety had

ceased.

4. In the meanwhile, Rs. 305-13-9 were got produced from both the plaintiffs by the Revenue Authorities. This was done without prejudice to their contentions. In the plaintiff's notice to the Collect referred to herein below, this amount was mistakenly shown as Rs. 335-0-0.

5. The plaintiff do not admit that the said Godown Keeper was guilty of the various acts of commission and ommission attributed to him nor that hr had caused loss to Government and that too to the extent mentioned. Indeed, he has since been acquitted of all such charges. They submit that, even if he were so guilty and caused loss to Govt, they are discharged from their obligation under their security bonds under the circumstances of the case. It was the bounden duty of the Mamlatdar and other superior officers to see that the said Godown Keeper was properly maintaining accounts and performing all other duties regularly without committing any such acts and as are now attributed to him. These acts and ommissions on the part of the superior authorities are inconsistant with the rights of the plaintiffs as sureties and amount to a voilation of the dity which Govt owed to them. The eventhal remedy of the plaintiffs as sureties against the principal debtor,- the said Godown Keeper - has thereby been impaired and they are therefore discharge in law from their liability under the bond. It is also learnt that Govt had made composition with the said S.N.Bhat and had also given him time. For these reasons also they ar e discharged from the liability under the bond. In any ca se, the plaintiffs submitt without prejudice that their liability whether -- individual or collective, never exceed Rs. 2000/-. In other words, the Govt will not be entitled to recover more that Rs. 2000/- in all from both of them. The Collector of the Collector dated 1-8-1953 and the notice of the Mamlatdar Mundgod dated 4-8-53 are therefore illegal and void and the plaintiffs are not in law bound by them.

6. The plaintiffs therefore issued under section 80 of the Civil Procedure Code, a Lawyer's notice on 9-2-1954 to the Collector of Kanara that they would file a suit against the State of Bombay in the court of the Civil Judge, S.D.Karwar for a declaration that the Collector's order of 1-8-1953 and the Mundgod Mamlatdar's notice of 4-8-1953 are null and void and of no legal effect, that for the reasons stated in pa ra 5 above, they are discharged from their liability under the security bond of 29-12-1949, and that in any case, their aggregate liability never extend beyond the limit of Rs. 2000/- and for an injunction restraining the State of Bombay from recovering the amount of Rs. 2000/- or any part thereof from either or both of the plaintiff and also for the refund of the said amount of Rs. 305-13-9 got produced from them and of such further amount as might be recovered from them by the State of Bombay hereafter together with interest at 6% on such amounts as are and may be recovered from them from the dates of recovery until repayment and also for costs of suits and suoh other relief as the Court may deem fit to grant and the circumstances of the case may require. Though the Collector received this notice on the 10th idem and acknowledged it in his letter of 12th idem, he has not cared to reply. On the other hand, despite this notice, the plaintiff's moveables were sought to be attached for the recovery of theamount, for which they were alleged

alleged to be liable, nothing worth attaching could be found.

7. The cause of action for this suit arose at Mundgod from 1-8-1953 the date of the Collector's order, from 4-8-1953, the date of the Mundgod -- Mamlatdar's order and also from 1951 or thereabout when the amount of Rs. 305-13-9 was recovered from the plaintiffs.

8. The cause of actionfor this suit arose at Mundgod, a place within the jurisdition of this court, and as this suit is against the State of Bombay, this court has jurisdiction to try it.

9. The valuation of this suit is, for the prupose of court fees, Rs. 310-13-9 and for other purposes Rs. 2305-13-9.

10. The plaintiffs therefore pray that a decree be passed against the defendent granting them,

(1) a declaration that the Collector's order of 1-8-1953 and the Mundgod Mamlatdar's Notice of 4-8-1953 are null and void and of no legal effect, that for the reasons stated in the plaint, the plaintiffs are discharged from their liability under the security bond of 29-12-1949 and that in any case, their liability can never exceed the limit of Rs. 2000/- and a permanent injunction restraining the defendents from recovering Rs. 2000/- or any part thereof from either or both of them

The valuation of this claim for the purpose of court fees, is ---------- Rs. 5-0-0

and for other purposes it is --- Rs. 2000/-

(2) refund of the amount got produced from the plaintiffs as stated above in plaint
The valuation of this plaim is -----Rs. 305-13-9

Total Rs. 310-13-9

and

(3) cost of this suit and such other relief as the Court may deem fit to do under the circumstances of the case.

Sd. Pltf No. 1
Sd. Pltf No. 2

We, (1)Devappa Krishnappa Hegde and (2) Basavannappa Ningappa Ganiger, both of Mundgod now at Karwar, do hereby declare that the contents of this plaint are true to our personel knowledge, in token whereof we have signed this at Karwar on the 18th of June 1954.

Sd. Pltf No.1
Sd. Pltf No. 2

Filed on 22-6-1954

Sd. V.S.Gokarn,
Pleader for the Plaintiffs

Civil Suit No. 0.S 86 of 1954 in the Court of the Civil Judge, S.D.Karwar

---

Lists of documents attached to the plaint:-

(1) Copy of the plaintiff's Notice to the Collector dated 9-2-1954

(2) Acknowledgement signed 'for Collector' dated 10th February 1954

(3) Collector's post card to the plaintiff's Pleader dated 12-2-1954

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21 1

From:

The District Government Pleader,Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

E

No. 48 of 1954. Karwar, dated 25-9-1954.

Sir,

O.S.No. 86-1954 had been fixed for written statement yesterday. As already intimated before, the Civil Judge of Karwar is unwilling to grant adjournments for long periods. He says that there should be no distinction between suits against Govt. and suits between private parties. He wants to expedite all suits. He has therefore granted only one week's time.I, have therefore sent a wire to you today. Please therefore expedite sending lines of Defence in the above suit. Please wire reply.

27923
28/9/54
E

Yours faithfully,

Dist.Govt.Pl.Kanara.

(4)

Submitted

Please see D.F.P's

letter overleaf.

The D.F.P. is already requested under this Office memo No 2-2-257/E 5/27.9.54 to file his written consultation with the Collector

Award-report under rule 118

VB
1/10

SAS 5.3/10

Civil Suit No. O.S 86 of 1954 in the Court of the Civil Judge, S.D.Karwar

---

Lists of documents attached to the plaint:-

(1) Copy of the plaintiff's Notice to the Collector dated 9-2-1954

(2) Acknowledgement signed 'for Collector' dated 10th February 1954

(3) Collector's post card to the plaintiff's Pleader dated 12-2-1954

Letter.

82
15

To

The Remembrancer of Legal Affairs,
Bombay Castle,
Bombay No. I.

No. 9157 Karwar, 6-10-1954.

Subject:-Civil Suits No.86/54 and 92 of 1954.

Reference:-Your No,22050/E dated 24-9-54.

Report under rule 118 of L.O. Rules has been forwarded to Government on 26-8-1954 in respect of Civil Suit No.86/54.

x not recd
m/D

It is further learnt from the copy of letter No.34/D-2552 of 54-55 dated 23-9-1954 from the Chief Conservator of Forests , Bombay State that the papers in Civil Suit O.S.92/1954 have also been forwarded to him with the report under rule 118 of L.O. Rules.

Sh. Inamdar

P.A.,
Collector of Kanara.

THE SECRETA... BOMBAY

29180
11/10/54 C

Subject for information

Award Report

O.C.S. No. 86/54

11/10

S S 11/10

Letter

To

The Remembrancer of Legal Affairs,
Bombay

No. 4905/Estt Karwar, 8th October 1954

Subject: Civil Suit No. 86 of 1954
Shris D.K.Hegde and B.N.Ganeger of
undgod

Reference: Your letter No. 22251/E dated
27th September 1954

The report under Rule 118 of the Law Officer's Rules has laready been forwarded under this office letter No. 4905/Estt dated 26th August 1954 through the Civil Supplies Department.

for Collector of Kanara

Copy forwarded with compliments to the Asst. Director of Civil Supplies (Dists), Bombay with reference to Civil Supplies Department letter No. 410/17046/II-C dated 10th September 1954

THE

29480
13/10/54

Subject to information

Await response

13/10

S.S. (Ref) 13/10 -

Urgent please

17 27

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No.648 of 1954. Karwar, dated 14-10-1954.

Sir,

In my letter No.614 dated 5-10-1954 I had intimated the fact that the adjournment application given in O.S.86-54 had been rejected. I have forwarded copy of the court's orde Thereafter I received a wire from you asking me to prepare written statement in O.S.No.92-1954 on the suit papers in Court. But in suit No.92-1954 further time has been granted. The difficulty now is only in O.S.No.86-1954. It is now fixed for issues on 16-10-1954. It is not possible to draft any written statement only on the strength of the copy of the plaint. I, therefore requested you to expedite sending the lines of defence immediately in O.S.No. 86-1954. More than a week has lapsed. I, therefore, reques you to expedite the matter and to send me the lines of defence immediately. I may be permitted to draft the W.S. on the lines of the defence and to produce the same without sending it in advance for approval to you.

Yours faithfully,

Dist.Govt.Pl.Kanara.

30015
18/10/54-C

Submitted

C.S.D may be requested to forward the case papers sent to the Collector vide No. 4905/Estt dt 20.8.54. The Dept. should not have kept papers for such a long time

VK
20/10

Sol (HC)

IMMEDIATE.

No. 24062/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 20th October 1954.

Civil Suit No.86 of 1954.
Shri. D. K. Hegde,
Vs.
The State of Bombay.

MEMORANDUM.

With reference to his telegram, dated the 19th October 1954, on the above subject. the District Government Pleader, Karwar is informed that the papers of the case in five files are sent herewith. He is requested to prepare the Written Statement and file the same in Court. If further adjournment is secured, he is requested to return the case papers to this office for preparing the brief. He is also requested to forward to this orrice a copy of the Written Statement filed by him.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Karwar.

ERS/20.10.

Submitted for signature
20/10
Sol (ML)

Await further developments

NK
21/10

SS 21/10

From:

The District Government Pleader, Kanara.

23
31

To

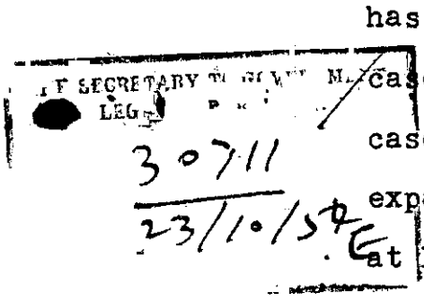
The Remembrancer of Legal Affairs, Bombay.

No. 661 of 1954. Karwar, dated 19-10-1954.

Sir,

Subject: O.S.No.86-1954. (Devappa Vs. State of Bombay

In continuation of my wire and letter No.582/25-9-54 I had addressed you my letter No.614 dated 5th instant intimating that the application for adjournment had been rejected by the Court. I had also quoted therein the order passed by the Court. The case was fixed for issues on 16th instant. Issues have been framed and the suit has been fixed for exparte hearing on 15-11-1954. I, therefore request you to expedite sending the lines of defence in the suit. I had assisted in drafting the report under Rule 118 in about the first week of August last. On enquiry in the Collector's Office I learn that the report was submitted on 22nd August 54 The matter refers to 'Supply' Branch. It may be that the Collect has forwarded the report to the Director of Supplies. In any case the fact remains that without the w.s. being put in the case has been fixed for hearing on 15-11-1954. To avoid an exparte decree it will be necessary to put in our statement at least in next week. Otherwise there will be an exparte decr



It is not possible to draft a written statement only on the basis of the plaint. Lines of defence will have to be intimated and the relevant papers will have to be sent t me for drafting the W.S.

Yours faithfully.

District Government Pleader.

LD

Submitted Pl. see D.S.P's
letter overleaf

Nec case pprs.

Have already been
sent to the D.S.P. vide
Utes' office memo No
24062/E-D 20.10.54.
Necessary instructions are
also issued. This letter
seems to have crossed
our above mentioned memo
Nec may await reply
to Utes office memo ab
PL 21 ante

23/10

Sol (MS) 25/10

Letter

2-5
33

To

The Assistant Director of Civil Supplies,
(Districts), Bombay

L.D.
25 OCT 1954

No. 4905/Estt Karwar, 21st October 1954

Subject: Civil Suit No. 86 of 1954 filed by Shri D.K.Hegde of Mundgod

Reference: Civil Supplies Department, letter No. 410/17046/II-C dated 10th September 1954

In continuation of this office letter of even No. dated 11th October 1954, I am enclosing herewith a copy of letter No. 663 dated 19th October 1954 from the District Government Pleader, Kanara for information.

The District Government Pleader, Kanara reports that the case has been fixed for hearing on 15th November 1954 and that the Court has refused further adjournments. The Remembrancer of Legal Affairs, Bombay may therefore please be expedited to sanction the lines of defence immediately. The papers of the case forwarded to Government under this office letter of even No. dated 11th October 1954 may also please be returned by return post in order to enable the District Government Pleader to study the case well in advance.

In order to avoid ex-parte decision of the case, early instructions are solicited.

for Collector of Kanara

SECRETARY TO GOVT. LEGAL DEPTH.
30823
28/10/54

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information.

Copy to the District Government Pleader, Kanara Karwar.

Submitted
The pps are already forwarded to the D.G.P.
Await further development
VL 29/10
SSO 29/10

From

35

The District Government Pleader, Kanara

To

The Collector of Kanara, Karwar

No. 663 of 1954 Karwar, 19-10-1954

Sir,

I had received the summons in this case forwarded by you with your letter No. 4905/Estt of 22-7-1954. Accordingly, I put in my appearance on 6-8-1954. Thereafter, the suit was fixed on 27-8-54. On that day, again I applied for time. Again it was adjourned on 24-9-1954. On that day, again I had to apply for time and the case was fixed on 4-10-1954. When I again applied for time on 4-10-1954, the Court rejected my application and ordered as follows:-

" From the records it is seen that three adjournments were granted for putting in written statements (vide Exh 7) , 11 and 12)No special concessions can be shown to Govt who it may be noted has already the advantage of two months previous notice. It is the practice of this court to grant only three adjournments to parties for putting in W.S. This is the fourth application. I therefore reject it".

I had intimated to the R.L.A all the dates fixed. I had sent a wire on 26-9-1954 that a short adjournment has been granted. It was followed by my letter No. 582/54 C. In the meanwhile, I received R.L.A's letter 22050/E dated 24-9-54 saying that report under Rule 118 of the L.O Rules had not been received therefore I could apply for two month's time. I produce this letter with my application dated 4-10-54. Yet my application was rejected. I intimated this fact to the R.L.A by my letter No. 614 dated 5-10-54. Two weeks has lapsed. Yet no lines of defence have been sent to me. Issues have been framed without my W.S and the case has been fixed for hearing on 15-11-1954. There will be an ex-parte decree if no prompt action is taken In this unhappy situation I have again sent a wire to-day followed by a detailed letter to the R.L.A requesting him to expedite sending the lines of defence. In the meanwhile, I request you to send me a copy of the report submitted under Rule 118 of along with the relevent papers xxx with the clerk who had handled the same. This may enable me to study this case before hand and draft a W.S without waiting for th lines of defence from the R.L.A so as to avoid an ex-parte-decree. Early attention is solicited.

Yours faithfully,

Sd. B.S.Mavinkurve,
District Government Pleader,
Kanara

271 37

From:

The District Government Pleader, Kanara

To

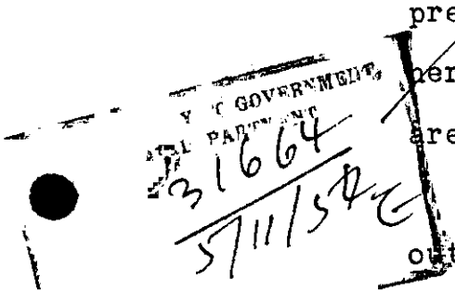
The Remembrancer of Legal Affairs, Bombay.

Subject: O.S.No.86-1954 (Devappa Vs. State).

No. 665 of 1954. Karwar, dated 30 -10- 1954.

Sir,

I received your letter No.24062/E dated 20th Octobe 1954 together with 5 files on 23-10-1954 at midday. The Court was closed from 24th instant. 23rd was a Saturday and therefore it was not possible to file the W.S. that very day I had to go through all the files and draft the W.S. The Court reopens today. During the holidays I had to study the papers, draft the W.S. and get it typed. I have also taken out all the relevant papers from the files and produced all these relevant documents along with the W.S. I have filed an application today for permission to admit the W.S. and the documents, as the suit has been fixed for hearing on 15-11-54 I have also prayed that the hearing fixed on 15-11-1954 should be cancelled and the case should be fixed for raising preliminary issues on any earlier date. I have forwarded herewith copy of the W.S. If additional grounds of defence are necessary I may be informed immediately.



As I had to file the relevant papers by taking them out of these 5 files, I do not think it will be worthwhile to send the remaining files containing unimportant papers. I have however enclosed herewith copy of the Collector's report submitted under Rule 118.

With a view to avoid such unavoidable delay I suggest that necessary changes may be made in the Rules that the D.G.P. should study the papers before hand and draft the W.S. and submit it along with the report under Rule 118. This will simplify approving of the draft W.S. and avoid such delays.

Yours faithfully,

D.G.P.Kanara.

In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No.86-1954.

Devappa Krishnappa Hegde and another ... Plaintiffs.

Vs.

The State of Bombay ..... Defendant.

Written statement put-in on behalf of the Defendant:

1. The claim for court-fees has not been properly valued The plaintiffs have prayed for declaration and injunction restraining the defendant from recovering Rs.2000/- or any part thereof from either of them. When the claim is mentioned at Rs.2000/- for restraining the defendant from recovering this amount from the plaintiffs, it cannot be valued arbitrarily at Rs.6/-. Similarly there cannot be different valuation for court-fees and for other purposes. Hence this suit is not maintainable unless proper court-fee has been paid.

2. Para 7 of the plaint mentions that the cause of actio for this suit arose on 1-8-1953 from the date of Collector's order and also from 1951 or thereabout when the amount of Rs.305-13-9 was recovered from the plaintiffs. There is mis-joinder of cause of action as it involves two different sets of cause of action independent of each other.

3. As regards the first cause of action dated 1-8-1953 it is based on the Collector's order of that date. As regards the second cause of action it is based on Collector's order dated 14-2-1951. These are two independent ~~of~~ causes of action. In the latter case the order has been carried into effect and the payment ~~k~~ has been made. Therefore the relief claimed is only ~~of~~ for refund. This order dated 14-2-1951 refers to independent items of misappropriation. Whereas the latter order dated 1-8-1953 was passed independently of the order dated 14-2-51. Hence the two causes of action cannot be joined together. Different aspects will have to be considered in the two cas the evidence as regards these two causes of action is not common. Hence there is clear misjoinder of causes of action

4. In the case of both the causes of action no relief can be claimed unless the orders passed by the Collector on 1-8-1953 and on 14-2-1951 are declared to be null and void. Declaration has been sought so far as the first order is concerned. But as regards the second relief ~~of~~ for refund of Rs.305-13-6 no relief can be claimed unless the order of recovery dated 14-2-1951 is got declared to be null and void and of no legal effect. This prayer appears to have been purposely dropped to avoid the bar of limitation.

5. The Civil Court has no jurisdiction to try such a suit based on administrative orders passed by the Collector. The claim is barred under section 9 C.P.Code.

6. The recovery of Rs.305-13-6 was not made under the Collector's order dated 1-8-1953 but it was ~~xxx~~ recovered from S.N.Bhat on 4-4-1951 as per Coll's order dated 5-10-1950. It is not true as alleged in plaint para 6 that this sum had been recovered from the plaintiffs. The plffs are therefore not entitled to any refund thereof.

7. As plaintiffs have not asked for declaration that the order dated 14-2-1951 ~~was~~ 5-10-1950 order date ultra-vires the plaintiffs are not entitled to claim the refund of the amount recovered. So long as the orders stand the recovery stands good, therefore no suit is tenable for the refund of the said sum.

8. The plaintiffs have not asserted on what date they had paid the amount of Rs.305-13-6. They have not quoted the number of the challan. The said amount had been recovered from Shri S.N.Bhat and not from the plaintiffs. Therefore the plaintiffs' claim for refund thereof is not tenable.

9. The amount of Rs.305-13-6 had been recovered from S.N.Bhat. But even assuming that the plaintiffs prove that it had been recovered from them their claim for refund is time-barred. The amount had been recovered under legal process. If the plaintiffs' case is that the recovery was wrongful they ought to have sued for refund of the amount within one year from the date of its recovery either under Articles 28,29 or at least under the general provisions of Article 36. As they have failed to bring this action in time their claim for refund of Rs.305-13-6 is time-barred.

10. Even assuming that the plaintiffs had credit this amount as per Collector's order dated 5-10-1950 ~~14-2-1951~~ their claim for refund is barred by estoppel. Having complied with the order and having failed to seek a declaration that the ord was illegal or ultravires, the plaintiffs are estopped fro claiming the refund.

11. Contents of para 1 of the plaint are admitte The security bond passed by the plaintiffs has been produced herewith.

12. As regards plaint para No.2 it is true that there was a net loss of Rs.5360-4-2 in respect of the short noticed in food-grains when Shri S.N.Bhat was serving as Go-Down-Keeper at Mundgod.This was independently of the lo noticed earlier of Rs.305-13-6 which were called upon to be refunded by the Collector in his order dated 5-10-1950 ~~14-2-1951~~.It not true to suggest that this amount had been recovered in pursuance of the Collector's order dated 1-8-1953 which is sought to be declared illegal and ultravires.

13. The order dated 1-8-1953 was passed by the Collector as a result of the Audit Superviser's Report dat 29-5-1952. The mamlatdar reported this matter in his lette dated 27-6-1952. The Collector's order dated 1-8-1953 is based on this Audit Note and the mamlatdar's Report.The total amount covered by the audit report came to Rs.6305-9- This was the total loss incurred by the Government. But it was reduced to Rs.5360-4-2 by giving benefit of doubt to S.N.Bhat as regards the balance.

14. The two prosecutions launched against Shri S. Bhat referred only to wrong totalling of paddy received on two three occasions. It had nothing to do with the items covered by the Collector's order dated 1-8-1953. Shri S.N. Bhat was acquitted on the ground that the wrong totalling was a bonafide mistake, that there was no criminal intentio and that the amount covered by the misappropriation had already been credited by him.Thus this item of Rs.305-13-6

has got nothing to do with the Collector's order dated 1-8-1953 nor ~~has~~ has it got anything to do with the prosecutions launched against Shri S.N.Bhat wherein he pleaded bonafide mistake as a justification. The ~~xxx~~ acquittal order has therefore nothing to do with the present Suit Claim No.1. ~~prosecution launched against Shri S.N.Bhat~~. The plaintiffs are not entitled to any refund of the said amount even if they had themselves credited the same. It is not true that this amount of Rs.305-13-6 had been credited by the plaintiffs without prejudice to their contentions.

15. Contents of para 3 of the plaint are partially denied. It is true that the Collector passed the order dated 1-8-1953. He passed the said order in his administrative capacity to make good the loss caused to the Government. The plaintiffs are therefore not entitled to any declaration that the said order is null and void and or no legal effect. The Civil Court has no jurisdiction to enter into the merits of this case and to review the said order passed by the Collector in his administrative jurisdiction.

16. It may be that the mamlatdar of Mundgod had issued an order on 4-8-1953 calling upon the plaintiffs to pay Rs.2000/-. The original security bond executed by Shri S.N.Bhat was for the total amount of Rs.2000/-. The interpretation is wrong that the mamlatdar had called upon each of the plaintiffs to the extent of Rs.2000/- and that the total amount sought to be recovered was Rs.4000/- in all. It is not correct to say that the Government claims Rs.4000/- from both the plffs. The Government claims Rs.2000/- from ~~either~~ both the plffs together or from ~~both~~ either of them It is not the case of the Government that the plffs are liable to the extent of Rs.4000/- in all. The plffs have misinterpretted the Collector's order or that of the mamlatdar.

17. It is not true that either of the plffs had been found insolvent to the extent of Rs.2000/- and that the surety bond had been cancelled as regards either of the plaintiffs.

18. The Collector had not called upon Shri Bhat to furnish fresh security in supersession of the security bond passed by the plffs. This contention of the plffs made in para 3 of the plaint is not correct. It is also not true that plff No.1 had been found to be not solvent for the amount of Rs.2000/- or that his security bond had not been ~~xx~~ accepted

23-5
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by the Government or that plff No.1 had been found to be not solvent for the amount of Rs.2000/-

19. It is not true that the pay due to S.N.Bhat had been with-held towards the satisfaction of the liability now due from sureties - plffs. A very large amount was due to the Government from Shri Bhat and therefore with-holding of 2 months' salary would only go into partial satisfaction of the net amount due from S.N.Bhat and the plffs are not entitled to claim any deduction thereof.

20. It is not true that plff No.2 had been discharged from his liability or that the village office had scored out his name as surety from any register. Even if there was such an act on the part of the village officers, it had not been brought to the notice of the Collector or of the Government. No officer duly authoris had agreed on behalf of the defendant to discharge plff No.2 from his liabilities.

21. Application dated 28-8-1953 made by plff No. was received by the Collector on 1-9-1953. There was no application dated 29-5-1953 as mentioned in plaint para 3 The application dated 28-8-1953 was rejected by the Collector in January 1954 as pointed out in para 3 of the plaint.

22. Shri S.N.Bhat had never been called upon to furnish fresh security in cancellation of the surety b passed by the plaintiffs. What took place between the mamlatdar and the plaintiffs is not binding on the He had no authority to discharge the plffs from liabilities.

23. As regards plaint para 4 Rs.305-13-0 appear to have been recovered as the loss caused to Governme in food-grains by ~~camaflegoing~~ camouflaging short-totalling of cr and excess totalling in debits. As said above this ha got nothing with the Collector's order dated 1-8-1953

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43

by the Government or that plff No.1 had been found to be not solvent for the amount of Rs.2000/-

19. It is not true that the pay due to S.N.Bhat had been with-held towards the satisfaction of the liability now due from sureties - Plffs. A very large amount was due to the Government from Shri Bhat and therefore with-holding of 2 months' salary would only go into partial satisfaction of the net amount due from S.N.Bhat and the plffs are not entitled to claim any deduction thereof.

20. It is not true that plff No.2 had been discharged from his liability or that the village office had scored out his name as surety from any register. Even if there was such an act on the part of the village officers, it had not been brought to the notice of the Collector or of the Government. No officer duly authoris had agreed on behalf of the defendant to discharge plff No.2 from his liabilities.

21. Application dated 28-8-1953 made by plff No. was received by the Collector on 1-9-1953. There was no application dated 29-8-1953 as mentioned in plaint para. The application dated 28-8-1953 was rejected by the Collector in January 1954 as pointed out in para 3 of the plaint

22. Shri S.N.Bhat had never been called upon to furnish fresh security in cancellation of the surety bond passed by the plaintiffs. What took place between the mamlatdar and the plaintiffs is not binding on the Govt. He had no authority to discharge the plffs from their liabilities.

23. As regards plaint para 4 Rs.305-13-0 appear to have been recovered as the loss caused to Governmen in food-grains by ~~camaflegoing~~ Camouflaging short-totalling of cr and excess totalling in debits. As said above this has got nothing with the Collector's order dated 1-8-1953,

24. As regards plaint para No.5, the main basis of the suit appears to be that Shri Bhat had been acquitted in the criminal cases. But as pointed out above, the two criminal cases referred to only some of the items of short credits of paddy while taking credit in the books maintained by S.N.Bhat. Whereas the amount now claimed as loss caused to Government refers to other independent items. The plffs cannot therefore rely upon the order of acquittal. The surety bond had been passed to cover any amount of loss. that may be caused to the Government, eventhough it was caused by negligence etc., When the Court acquitted Shri S.N.Bhat on the ground that there was no criminal intention and that there was accidental mistake in totalling the figures of credit, the plffs cannot rely upon the judgment to exhonerate themselves from the civil liability. as the security bond covers all sorts of losses caused to the Government eventhough they might have been caused by the negligence of Shri S.N.Bhat.

25. The plffs next assert that there was omission on the part of the higher authorities in not detecting the defaulcation in time, and that therefore they are discharged from their liability. This allegation is not true. Such mistakes carefully camouflaged could not be detected until the final audit. Immediately after the final report necessary action had been taken. Therefore the plffs cannot claim discharge from their liabilities on the ground of slackness of the superior authorities.

26. It is not true that Government had made any composition or given any time to Shri S.N.Bhat. There has been no act or omission on the part of the superior authorities inconsistent with the rights of the plaintiffs as sureties of S.N.Bhat amounting to a violation of the duty which Government owed to them. Therefore it is not true that the eventual remedy of the plffs as sureties against S.N.Bhat has been impaired and that therefore the plffs are discharged in law from their liability under the surety bond. All the allegations made in plaint para 5 are therefore denied.

27. As regards plaint para 6 it is a fact that notice under section 80 C.P.Code had been issued to the Collector.

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But the plffs are not entitled to any declaration that the Collector's order dated 1-8-1953 was null and void or that the recovery proceedings started by the mamlatdar of Mundgod under the orders of the Collector are illegal. The plaintiffs are not entitled to any injunction restraining the Collector from recovering the amount to the extent of Rs.2000/- from both the plaintiffs or from either of them.

28. It is not necessary to give any reply to the notice issued by the plaintiffs under section 80 C.P.Code. Rule 114 of the Rules for the Conduct of Legal Affairs of Government specifically lays down that no reply is necessary when the grievance set up in the notice is not genuine and does not require its redress. Hence no reply had been given to the notice.

For all these reasons plaintiffs' suit is not maintainable and therefore it may be dismissed with costs.

District Government Pleader.

I, B.S.Mavinkurve, District Government Pleader, Kanara Karwar do hereby declare that the contents of this written statement are true to the best of my knowledge and belief.

Signed at Karwar on 29th October 1954.

Letter.

To

The Remembrancer of Legal Affairs, Bombay.

No.4905/Estt Karwar, 26th August 1954.

Subject: Suits: Kanara.
O.S.86 of 1954 filed by Shri D.K.Hegde and B.N.Ganeger of Mundgod against the State of Bombay.

I am forwarding this report as required by Rule 118 of the Rules for the conduct of Legal Affairs of the Govt.

Rule 118(1)

(i) The No. of the Suit is O.S.No.86 of 1954 in the Court of the Civil Judge, Senior Division,Karwar.

(ii) Date of institution:- 22-6-1954.

(iii) The plaintiffs in this case are:-
(1) Shri Devappa Krishnappa Hegde and
(2) " Basavannappa Ningappa Ganiger of Mundgod.
The suit is filed against the State of By.

(iv) The suit is filed for ,
(1) Rs.310-13-9 for court fees.
(2) " 2305-13-9 for other purposes.

(v) Date of first hearing: 27-8-1954.

(vi) Notice under section 80 Civil Procedure Code was served on 10-2-1954.

Rule 118(2) (a) The plaint is in English. A copy of the plaint is enclosed.

(b) A copy of the list of documents attached to the plaint is also enclosed.

(c) The circumstances which lead to the suit are detailed in the plaint. Contents of para 1 of the plaint are admitted. A copy of the security bond (English translation) is enclosed.

As regards para 2 of the plaint, it is true that there was a net loss of Rs.5,360-4-2 in respect of the shortages noticed in foodgrains when Shri S.N.Bhat was serving as Godown Keeper, Mundgod. The prosecution launched against Shri Bhat did not refer to this item of Rs.5,360-4,2. The two prosecutions launched against Shri Bhat referred only to wrong totalling of paddy received on two or three different dates. The accused was acquitted on the ground that the wrong totalling was a bona-fide mistake and that there was no criminal intention. An appeal against the order of acquittal has already been recommended on the ground that

the items of such wrong totals come to Rs.305-3-0 only and in view of innumerable such cases, the plea of accidental wrong totalling was not correct. It appears that this amount of Rs.305-13-0 has already been credited to Govt by Shri S.N.Bhat. This item of Rs.305-13-0 has therefore, got nothing to do with the present suit.

As regards para 3 of the plaint, it is true that the Collector made an order on 1-8-1953 that the amount of the loss suffered by Government (to the extent of Rs.5,360-4-2) should be recovered from Shri S.N.Bhat and also his sureties (the present plaintiffs). Accordingly, the Mamlatdar of Mundgod must have issued the order on 4-8-1953 calling upon the plaintiffs to pay Rs.2,000/-.

The original security Bond executed by Shri S.N.Bhat was for the total amount of Rs.2,000/- The interpretation that each of the two sureties is liable to the extent of Rs.2,000/- is therefore correct. It does not, however, mean that Government claims, in all, Rs.4000/- from both the plaintiffs. It only means that the sum of Rs.2,000/- can be recovered from both together or from either of the two sureties.

The pay due to Shri S.N.Bhat had been withheld by the Mamlatdar of Mundgod, as large amount was due from Shri Bhat.

The Collector had not called upon Shri S.N.Bhat to furnish security and therefore the plaintiff's allegation in para 3 is not correct. It is not also true that plaintiff No.1 had been found to be not solvent for the amount of Rs.2,000/-.

It is not true that plaintiff No.2 had been discharged from his liability and that the village officers had even scored out his name as surety from any register. Even if there was such an act on the part of the Village Officers, it has not been brought to the notice of the Collector or of Government. NoOfficer duly authorised, had agreed to discharge plaintiff No.2 from his liabilities.

Application dated 28-8-1953 made by plaintiff No.1 was received by the Collector on 1-9-1953. There was

no application dated 29-5-1953. There was no application dated 29-5-1953 as mentioned in plaint para 3. The application dated 28-8-1953 was rejected in January 1954 as pointed out in para 3.

As regards plaint para 4, Rs.305-13-9 appears to have been recovered as the loss caused to Government in foodgrains camouflaged by short totalling or excess totalling.

Regarding plaint para 5, the main basis of the suit appears to be that Shri Bhat has been acquitted in the criminal case. But as put forth above, the two criminal cases referred only to small quantities of paddy shown less in totalling upl whereas the amount now claimed as loss caused to Government refers to other items. The plaintiffs cannot, therefore, rely upon the order of acquittal. The security Bond is taken to cover any amount or loss that may be caused even by negligence. When the Court acquitted Shri Bhat on the ground that there was no criminal intention, but that it was a pure accidental mistake in totalling. the plaintiffs cannot rely upon the judgment to exhonerate their liability, as the security Bond covers all the losses caused even by negligence. The ommission of the higher authorities in not detecting the defaulcation in time cannot justify the plea that the plaintiffs are exhonerated from their liability. It is not true that Government have made any ~~xxxxxxxxx~~ composition and have given time to Shri S.N. Bhat. All the grounds put forth in plaint para 5 are therefore denied. It is however, admitted that the maximum liability that can be enforced against both the plaintiffs is limited to Rs.2.000/- although the whole amount can be recovered from either of them.

As regards plaint para 6, it is a fact that notice under section 80 C.P.Code had been issued to the Collector. But the plaintiffs are not entitled to any

declaration that the Collector's order dated 1-9-1953 was null and void, or that the recovery proceedings started by the Mamlatdar of Mundgod under the orders from the Collector are illegal, or that the plaintiff is not entitled to any injunction restraining the Collector from recovering the amount to the extent of Rs.2,000/- from both the plaintiffs or either of them.

Regarding plaint para 7, the amount of Rs.305-13-6 was not recovered under the Collector's order dated 1-8-1953. It was an order of 14-2-1951. This is therefore an independent item of loss and it cannot be raked up now. This order was passed on 14-2-1951 whereas the suit refers only to the recovery proceedings started on 1-8-1953 and therefore appears to be time-barred. The recovery of Rs.305-13-6 is perfectly legal and valid. Hence the plaintiff is not entitled to any relief.

All the documents are sent herewith.

The lines of defence of the suit may kindly be sanctioned early, as it is reported by the District Government Pleader, Kanara that the Civil Judge, senior Division, Karwar is reluctant to grant more than three adjournment even in Government suits, as he says that he cannot make distinction between suits of private party and or Government.

Sd.S.B.Kulkarni,

Collector of Kanara.

Through the Secretary to Government, Civil Supplies, Department, Bombay, with compliments.

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

Subject: O.S.No.86-1954. Devappa Vs. State of Bombay.

No. 677 of 1954. Karwar dated 3-11-1954.

Sir,

In continuation of my letter No.665 dated 30-10-1954, I have the honour to inform you that I produced the W.S. along wit a special application on 1-11-1954. The Court has however ordered that I should deposit Rs.40/- out of plaintiff's costs before the W.S. can be accepted. I may therefore be permitted to draw Rs.40/- for payment into court. Time has been granted till 15-11-1954 for depositing this sum.

31801 - 6/11/54 E

L.D. 5 - NOV 1954

Yours faithfully,

Dist.Govt.Pl.Kanara.

Submitted

Pl. see D.G.P's letters at Pp. 29 & 43 ante.

He has ~~folded~~ forwarded a copy of WS to be filed on 15.11.54 for approval. He has requested in his letter dated for permission to draw Rs. 40/- for payment into Court for orders

Sol (ML) D.G.P. has permitted to draw Rs. 40/- 8-11

6/11

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Karwar Civil Suit No.86/54

This is a suit filed by Messrs. Devappa Krishnappa Hegde and Basvappa Ningappa Ganiger against the State of Bombay for a declaration that the Collector's Order dated 1=8-1953 and the Mamlatdar's notice dated 4-8-1953 calling upon the Plaintiffs to pay Rs.2,000/- each to the Defendants is null and void and of no legal effect, etc. /A

The suit is defensible.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

29/3

Sol (UC) 29-3

x No 7469-E
7-4-55.

RECEIVED in A. & E.D. on 9-4-55

Secy AFD 9.4.55.

Karwar

No. 7333-E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 6-4- 195

Subject: Civil
Suit No. 86 of 1954.

MEMORANDUM

The District Government Pleader, Karwar
is informed that the defence of the suit noted above
is sanctioned on the lines of the accompanying brief.

~~Papers of the case in~~ File
~~received from the Collector accompany.~~

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Karwar, Kanara

BD/

Q Rt Dres mederus

15530

19-355

L.D. 14 APR 1955

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 323 of 1955. Karwar, dated 9-4-1955.

Sir,

I am in receipt of your letter No.7333 dated 6th instant forwarding the lines of defence in O.S.86 of 1954 filed against the Bombay State by Devappa and another. It was in this suit wherein the Civil Judge refused to grant 4th adjournment and declared the defendant ex-parte. Thereafter W.S. was produced and the exparte order was set-aside on condition of payi Rs.40/- out of plff's costs. These facts were reported you under this office letter No.614 dated 5-10-1954. I had to file the W.S. in last October, copy of which had been sent to you for your approval. This suit had been fixed today for framing issues. In the meanwhile document have been produced and interrogatories were served on the plff. He had already replied to the interrogatories. The issues have been framed, today. Now the case will be fixed for filing list of witnesses and then for hearing. The case will come up for hearing after Summer vacation. In view of this situation I request you to clarify whether the W.S. already filed in October last requires any amendment.

An early reply is awaited.

Yours faithfully,

Dist.Govt.Pl.Kanara.

Submitted

In this case D.G.P. Kanara had filed W.S ~~in~~ before the defence of the suit was to be sanctioned. The defence of the suit was sanctioned on 29-9-1983

The D.G.P in his letter overleaf ~~requests~~ asks whether the W.S already filed in October last requires any amendments.

The case may be marked to ~~me~~ examine the W.S

27/4

Sir, Shri Chitre to scrutinize

The W.S in the light of the brief sent to D.G.P and see whether any amendment is necessary in the W.S

Ent
27.4.

Submitted

The Written Statement filed by the D.G.P on 29/10/84 is more exhaustive than the brief prepared on 12/3/84 by the legal branch of the C.S.D. In fact the brief seems to have been prepared on the basis of the W.S. Attention is however requested to 'A' at para 5 of the brief vis-a-vis 'A' at para 16 of W.S. In view of the Collectors report the views taken in the brief that Rs 2000/- can be recovered & are attempted to be recovered from each surety (Rs 4000/- in all) do not appear to be correct. Only a sum of Rs 2000/- ought to be recovered jointly & severally from the two sureties.

The W.S already filed by the D.G.P need no amendment

Ent.
29/4

Sol (NVL) 29/4

No. 9114/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 2nd April 195

Subject:- Written Statement in
C.S. 86 of 1954.

MEMORANDUM.

With reference to his letter No. 323, dated the 9th April 1955, on the above subject, the District Government Pleader, Kanara is informed that the written Statement filed by him on the 29th October 1954 is in order and requires no amendment.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara.

BM.
30.4.

No. 178 of 1955.
Karwar, 25th July 1955.

57
617

From

The Assistant Public Prosecutor,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir,

I have the honour to inform you that the judgment in the marginally noted suit filed against Government in the Court of the Civil Judge, Senior Division, Karwar was delivered on 22nd inst. and the suit is dismissed with costs.

O.S.No.86-1954.

1. Devappa Krishna Hegde,
2. Basavanneppa Nagappa Ganiger; both of Mundgod
... Plffs.

Vs.

State of Bombay. Deft.

Yours faithfully,

S. Hegde 25/7

Asstt.Public Prosecutor,
Karwar.

21798
E
28/7/55

1/8

No. 16894/E
Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay 1/8 August 1955.

Subject:- Civil Suit No.86 of 1954.

MEMORANDUM.

With reference to his letter No.668 dated the 25th July 1955, the District Government Pleader, Karwar, is requested to forward uncertified copies of the judgment and decree to this office immediately.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Karwar.

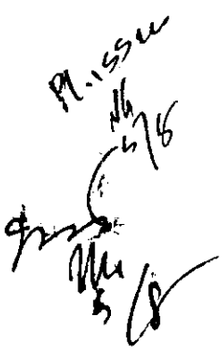
RMS.
1.8.

Legal Department.

65

Submitted.

These papers which appear to have been informally taken from the C.S.D. may be returned to the A. & F.D. as they are no longer required by this Dept. The Dept, may be informed that the papers at pages 1-32 of C.S. which contained two copies of report under rule 118 of the L.O. Rules have been removed.



Solr. (M.L.) 5/4 M.M.N 4/8

U.R. to A. & F.D. No. 17355/E dated 6/8 August 1955.

63 .+

In the Court of the Civil Judge,
Senior Division,Karwar,
at Karwar.

67

O.S.No.86-1954.

Pleaders.

Sari V.S.Gokarn.

1) Devappa Krishna Hegde, aged 58, Ryot of Mundgod.

2) Basavannappa Ningappa Ganiger, aged 40, Ryot of Mundgod. Plaintiffs.

against

District Govt Pleader.

The State of Bombay. Defendant.

Claim - Rs.310-13-9 for Court fees.
Rs.2305-13-9 for other purposes.

x x x x x

Bill of Costs.

Plaintiffs.	Defendant.	Rs.	a.	p.
	Stamps on applications, Exhs.7A,11,12,13.14.17 & 23:	4-	6-	0
x x x	Pleader's fees:	136-	7-	0
	x x x x			
	Total -	Rs.140-13-0		

Given under my hand and the seal of the Court this 22nd day of July 1955.

Sd.M.M.Shirkol,
Civil Judge,Senior Division.

Appix
Plff's pleader: Sd.V.S.Gokarn.

Deft's Pleader: Sd.B.S.Mavinkurve.

" TRUE COPY "

District Government,
Pleader,Kanara,Karwar.

69-64

No.839 of 1955.
Karwar, 16/9/1955.
17

From

The District Government Pleader,
Karwar.

To

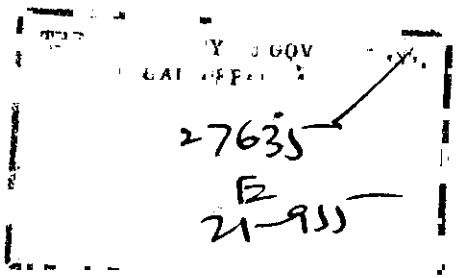
The Remembrancer of Legal Affairs,
Bombay.

Sir,

As desired by your letter No.16894/E, dated 1st August 1955 I have sent herewith uncertified copies of decree and judgment in O.S.No.86 of 1954.

Yours faithfully,

Dist.Govt.Pleader,Karwar.



4

Submitted

CS No 86/54

decided in favour of Govt

Award printed copy of

4 pl

11

2/9

Secl (Imp) M

229

Received on :- 22-6-1954. 67

Registered on :-23-6-1954)

Decided on :- 22-7-1955.

Duration :- 1-1-0

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KARWAR.

AT K A R W A R.

Civil Suit No. 86 of 1954. Exhibit No. 64.

Pleaders.
Mr. V.S. Gokarn.

1. Devappa Krishna Hegde, Hindu, 58, ryot, resident of Mundgod,
2. Basavanappa Ningappa Ganiger, Hindu, 40, ryot, resident of Mundgod. — Plaintiff.

Against.

District Government Pleader. — The State of Bombay. — Defendant.

Claim- Rs. 310-13-9 for Court fees and
" 2305-13-3 for other purposes.

This is a suit against Government for declaration and injunction The declaration sought is that the Collector of Kanara's order dated 1-8-1953 and the Mundgod Mamlatdar's notice of 4-8-1953 were null and void and had no legal effect, and that for the reasons stated in the plaint the Plaintiffs were discharged from their liability under the security bond of 29-12-1949 and that in any case their liability could never exceed the limit of Rs. 2000/-; and the injunction is to the effect that the Government be restrained form recovering Rs. 2000/- or any part thereof from the Plaintiffs. A further prayer for refund of Rs. 305-13-9 has also been made, which it is said, the Government has got produced from the Plaintiffs.

Plaintiffs had stood sureties to one Satyanarayan Bhat who was working as Godown-keeper at Mundgod and had bound themselves to be responsible for an amount of Rs.2000/- for the due performance of duties by the said Satyanarayan Bhat and for any loss caused by him through his negligence or misperformance of duties. Later on it was found that the said Satyanarayan Bhat had not maintained proper accounts and had caused a net loss of Rs. 5360-4-3 to the Government. Thereafter he was prosecuted twice. The first prosecution was withdrawn and the second ended in his acquittal. After that the Collector passed an order for the recovery of the loss from the Plaintiffs who were sureties to the extent of their surety bond of Rs. 2000/-

Plaintiffs protested against the order on various grounds but without effect. They have now approached this Court praying for the above-mentioned reliefs on the following allegations..

In the first place they submit their surety bond had been cancelled on the ground of their insolvency and therefore they could not be now proceeded against. In this connection they state that after the acquittal in the criminal case of Shri Satyanarayan Bhat the Collector passed an order on 1-8-1953 that the amount of loss suffered by the Government should be recovered from the said Satyanarayan Bhat and also from the Plaintiffs to the extent of their liabilities under the above-mentioned security bond. In pursuance of these the Mamlatdar Kundgod issued a notice on 4-8-1953 ordering the sureties to produce Rs.2000/-. In reply to this notice, the Plaintiffs addressed a communication to the Mamlatdar denying the liability and further stating that they had been found insolvents for the amount. It is further alleged that Plaintiff 2's name had been scored from the surety Register on that account. Hence they submit that they were discharged from their liability.

Secondly they deny that the said Godown-keeper Shri Bhat was guilty of the various omissions and commissions attributed to him and they further deny his having caused any loss to Government. In this connection they further submit that even if the Godown-keeper was guilty of these things still they would not become liable under the security bond as the Government authorities did not perform their part of the duties of supervision over him properly and that it was mainly due to their lack of supervision and negligence that Shri Satyanarayan Bhat was enabled to play the mischief. So they submit that by these actions of the Government their rights as sureties had become impaired and they therefore were descharged from their liability.

Thirdly they allege that the Government had composed the matter with Shri Satyanarayan Bhat and had also given him time to pay the amount. Therefore too they contend that they were discharged from their liability.

These are the three grounds on which they submit that their liability under the security bond stands cancelled.

They further submit that Rs.305-13-9 was got produced from both of them by the Revenue authorities inspite of their protest. They therefore pray for the recovery of this amount as well

2. The Defendant by its written statement, Ex.19, resists the Plaintiffs' suit on the following grounds. Firstly it is contended that this Court had no jurisdiction to try the suit under Section 9 C.P.Code as it was based against an administrative order passed by the Collector. It is next contended that the suit as it tries to attack the order passed by the Collector on 14-2-1951 was not tenable without a prayer for setting aside that order. It is thirdly contended that the sureties were never found to be insolvent and were never discharged on that account. In this connection it is further submitted that if any order had been passed by any inferior officer in that behalf the Government was not bound by it. Fourthly, it is contended that Shri Bhat was really guilty of all the acts of commission and omission alleged against him and that further he also caused a loss of Rs.5360-4-3 to the Government and therefore the sureties were liable to the extent of the liability undertaken by them under the bond and in terms thereof. Fifthly, it is contended that there was no omission on the part of the higher authorities in not detecting the defalcation in time, as the acts committed by Shri Bhat had been carefully camouflaged, and further there was no ~~xxxxxxx~~ slackness on the part of the superior authorities in the discharge of their duties. It is therefore submitted that the sureties were not discharged on this account.

Then regarding the alleged recovery of Rs. 305-13-9 from the Plaintiffs the Government denies the recovery from them. According to the Government, this amount was recovered from Shri Bhat. The Government further submits that even if it was proved that the amount had been recovered from the Plaintiffs the refund claimed in that behalf was time-barred, and that further their claim was affected by the bar of estoppel. The Government in the end contends that the order passed by the Collector on 1-8-1953 was not ultra vires and illegal and therefore this Court had no jurisdiction to enter into the merits of the case and to review the said order. For all these reasons the Government submits that the Plaintiff's suit should be dismissed with costs.

3. The following issues were set down for hearing at

ex.25:

1. Whether the plaint for Court-fees has been properly valued?

2. Whether the suit is bad for misjoinder of causes of action?

3. What order ?

4. Are Plaintiffs bound to get the order dated 14-2-1951 set aside before asking for refund ?

5. If so, is the claim for refund tenable ?

6. Whether the suit is barred under Section 9 C.P.C. and Court has no jurisdiction to entertain such a suit ?

7. Do Plaintiffs prove that sum of Rs. 305-13-6 had been recovered from them as sureties of Shri S.N. Bhat ?

8. If so, on what date did the Plaintiffs credit this amount ?

9. Is the claim for refund in time ?

10. Are the Plaintiffs estopped from claiming refund ?

11. Whether Plaintiffs prove that the Collector's order dated 1-8-1953 is ultra vires and illegal ?

12. If not has this Court jurisdiction to review the said order ?

13. Whether Plainriffs prove that they were discharged from their liabilities as sureties of S.N.Bhat for reasons asserted in plaint para 5 ?

14. If not, do Plaintiffs prove that they are not liable under the terms of the surety bond ?

15. Are Plaintiff entitled to the declaration and injunction sought ?

16 Are they entitled to claim the refund ?

4. My findings are:-

1. Has already been found below Ex.27.

2. Has already been found below Ex.27.

3. Has already been found below Ex.27.

4. Yes.

5. Not tenable.

6. Not pressed.

7. No.

8. Does not survive

9. No.

10. No.

11. No.

12. This court has no jurisdiction.

13. No.

14. No.

15. No; No.

16 No:

Reasons

5. Parties did not elect to lead any oral evidence (Vide thier joint jahiri at Ex.63). So the case stands to be decided entirely on the documentary evidence adduced.

6. Four grounds in the main have been made by the sureties in this case for discharging them from the liability undertaken by them for the duex performance of duties by Shri S.N.Bhat- The Godown Keeper. The four grounds are namely:-

1. that the sureties had been found to be insolvents by the Revenue Authorities;

2. That the Government had composed the matter with the principal offender Shri S.N.Bhat and had given him time to make good the amount;

3. that the alleged offender Shri S.N.Bhat did not at all commit any of those acts of commission or omission or defalcation alleged against him; and

4. that there was lack of supervision on the part of the Superior authorities to check up the illegal activities of Shri Bhat, if any, and that further the officers were guilty of negligence in the performance of their duties and hence the defalcation if any committed by Shri Bhat was made possible by their action

These are the four grounds on which the sureties now want to absolve themselves of the liability that they have undertaken under the surety-bond which is at Ex.40. It may be noted here that so far as the terms of the surety bond are concerned there is absolutely no dispute. Parties are quite in agreement regarding the extent and scope of the terms contained in the bond. Under the bond these two sureties bound themselves jointly and severally in the sum of Rs.2000/- guaranteeing the due performance of duties by Shri S.N.Bhat and also for holding themselves responsible for any loss caused by the mal-performance or non-per-formance of those duties by Shri Bhat and also by his negligence. As noted already there is absolutely no dispute regarding the terms of the security bond detailed above

7. But in order to appreciate the contentions made by the sureties, we should note briefly what exactly transpired during the regime of Shri S.N.Bhat as Godown-Keeper. In this connection what we have is only documentary evidence and all the documents in this case have been exhibited by consent of parties. The documents can therefore be taken to have been duly proved. Shri Bhat it seems was Godown-keeper during the period from 7-11-1948 to 5-6-1950. During this period he committed short-credits of food-granins to Government Godowns, temporary mis-appropriations of Government food-granins and falsification of accounts. These things committed by Shri S.N.Bhat came to light, it seems, from the report of the Mamlatdar and also from the Junior Account Supervisor's reports dated 29-5-1950 and 30-6-1950(Vide Exs.45 and 46, the reports). Thereupon the Collector ordered enquiry in the matter (Vide Ex.51, the Collector's order) and called for further detailed

accounts in respect of the shortages from the Supervisor. The Supervisor submitted another detailed account on 29-5-1952(Vide Ex.53). Meanwhile Departmental proceedings were taken against Shri Bhat and he ultimately, I am told, was dismissed from the job. The final loss that accrued to Government on account of Mr. Bhat is stated at Ex. 57 which is Rs. 5360-4-3. Then the Collector by his order dated 1-8-1953 ordered the recovery of this amount of Rs. 5360-4-3 from Mr. Bhat and his sureties to the extent of their liabilities, as arrears of land revenue. This in short is the brief history relevant to the issues under consideration. Here a further fact should be remembered that two prosecutions had been launched against Mr.Bhat, out of which one was withdrawn and the other ended in his acquittal.

8. The first ground of attack is that the sureties had been found to be insolvent, by the Revenue authorities and, therefore had been discharged. But the sureties have not produced any evidence in support support of their contention. On the other hand, Ex. 61 which is the letter of the Mamlatdar written to the Collector, Kanara, shows that both the sureties were solvent. So I do not think there is any substance in this ground.

9. The next ground is that the Government had composed the matter with the principal offender Shri S.N.Bhat and had even given him time for payment of the losses caused by him and therefore they the sureties had been discharged from their liabilities. But unfortunately here again the sureties have not produced any evidence in support of the contention made by them. I may incidentally remark that had the sureties proved this ground, they undoubtedly would have been discharged from their liabilities under the law. But, as it is, the sureties have failed to prove any such composition and therefore they cannot avail themselves of this defence.

10. The third ground of attack is that the alleged offender Shri S.N.Bhat did not commit any of those acts of commission and omission attributed to him. But from the evidence discussed by me already, there is enough evidence to show that Shri Bhat was guilty of the commission of the acts of short-credits, temporary misappropriations, and falsification of accounts. The various audit reports at the Collector's enquiry and the order passed in that

behalf amply justify the charges levelled against him by the Government and his guilt in the matter. I therefore find no substance in this plea as well.

11. Then the fourth and last ground of attack is that there was lack of supervision on the part of the superior authorities which facilitated Mr. Bhat's commission of those acts and that by this lack of supervision, the Government was guilty of an act which was inconsistent with the rights of the sureties by which the eventual remedy of the sureties against Shri Bhat had become impaired and therefore they were discharged. The contention is presumably made under Section 129 of the Indian Contract Act so as to conform with its requirements. But the unfortunate thing is that none of these requirements is proved. There is nothing to show that there was slackness on the part of the Government in its supervision. Nor is there anything to show that the Government did any act which was inconsistent with the rights of the sureties against the offender Shri Bhat and their rights against Shri Bhat had become impaired. The learned pleader for the sureties however argues that the Government should have detected the defalcation of Mr. Bhat at the earliest opportunity. But in my opinion it is humanly impossible to detect these things immediately when they were done. For, in a Government Godown thousands of bags are stacked and the accounts are written on a very large scale. Any shortage in the stock stored in these Godowns, or any defalcation in the accounts is very difficult to be detected at its earliest stage. It could only be detected when the entire things were closely examined and audited and this was done by the auditors when things began to show up themselves. So it cannot be said that the Government was in a way guilty of lack of supervision or negligence on its part. On the other hand it was also the primary duty of these sureties who had undertaken for the due and good performance of duties by Shri Bhat to see that he performed his duties with all care, efficiency and honesty. So the sureties cannot accuse with any advantage the Government when they themselves failed to do the duties. Further the sureties have not shown how their rights had become impaired by the actions of the Government. So I do not think there is also any substance in this ground.

12. On the whole I find no substance whatsoever in the grounds made out by the sureties. Their liability is very clear form the terms of the sucurity-bond itself and inview of the things done by Shri S.N.Bhat, they have been rightly held to be liable to the extent of Rs.2000/- for which they bound themselves over.

13. There is still another contention made by them and it is that Rs. 305-13-6 had been forcibly recovered from them. There is absolutely no evidence in this behalf. In their answers at Ex. 24 to the interrogatories by Government, they state that they produced the amount since the Circle Officer asked them to produce it and they held a receipt in that behalf. This receipt they have not produced. Nor have they produced anything to show that they produced the amount. So the contention that they produced the amount has absolutely no truth in it. I reject it forthwith.

14. Now issues 4, 5, 7, 8, 9 and 10 relate to the refund of this sum of Rs. 305-13-6 and these are raised on the contention made by the Government in this behalf. I have already held that the Plaintiffs have failed to prove that the sum was got produced form them by the Government. So in fact all these issues no longer survive. But if findings be necessary, they will be as below:

15. The contention of the Government pleader is that the prayer for the refund of Rs. 305-13-6 alleged to have been got produced from the sureties cannot be made without seeking to set aside the order passed by the Collector in that behalf on 14-3-1951. The order is to be found at Exhibit No 60. The Collector by that order directed the Mamlatdar to make recovery of the money by coercive measures from Shri Bhat and also from his sureties. It is now submitted by the learned Government pleader that this order passed by the Collector was perfectly within the authority of the Collector and therefore any amount recovered under the order could not be refunded without first challenging the order. The pleader for the sureties could not successfully controvert the argument that the order passed by the Collector was intravires his authority. Further if we look to the terms contained in the bond it is clearly stated that any amounts to be recovered thereunder could be recovered as arrears of land revenue. So I think the Collector had perfect authority in the matter to pass such an order. If so, it was quite necessary for the sureties to get the order set aside before seeking a refund of the money.

Now under Art.14 the order could be impeached within one year from the date of the act or order. The sureties so far have not proved when the amount was attached from them. They ought to have filed the suit within one year from the date of the order. But this suit was filed on 22-6-1954 which was nearly three years from the date of the the order The prayer therefore in that behalf is clearly time-barred and hence the clair for the refund is untenable. The Government further urged another plea in this behalf and that is that Plaintiffs were estopped from claiming the refund. I cannot understand on what basis this contention has been made. The contention was not urged with any degree of assurance by the learned Government pleader. I therefore see no substance in the contention. I answer all the issues in the light of my above discussion.

16. The next question taken by the Government is that the suit was barred under section 9 C.P.Code. But the learned Government pleader did not press this issue at the tiem of the argument. So the issue does not deserve any further discussion. Then we came to yet another issue and that is issue No.11. The contention under that issue is that the order of recovery passed by the Collector on 1-8-1953 against the sureties under the security bond, was made under the provisions of the Land Revenue Code and was perfectly within his authority and therefore this Court had no jurisdiction to interfere with the order. But the submission of the learned pleader for Plaintiffs is that he had attacked the order on the ground that it was ultra vires and illegal and in that sence the suit was perfectly maintainable, inspite of the order made by the Collector. To the extent of the submission made by the learned pleader for Plaintiff, his argument would hold good. But on merits it is clear to me that the Collector passed the order by virtue of the authority vested in him under the provisions of the Land Revenue Code which as agreed under the terms of the bond were made applicable to any breach of the terms contained in the bond. When thus the Collector had authority to act under the provisions of the Land Revenue Code and he acted as such, I do not think the Civil Court has any authority to interfere with the order made by the Collector. I therefore agree with the submission made by the learned Government pleader and hold that this Court had no authority to interfere with the matter.

17. So in the end Plaintiff's suit cannot be sustained either on facts or on law. It will have to be dismissed straight-way.

18. But regarding the costs the learned pleader for the Plaintiffs makes a submission and it is that the immediate cause for the suit was the misinterpretation by the Mamlatdar of the order given by the Collector in the matter of recovering the amount of Rs. 2000/- from the sureties. The Collector's order so far as it is concerned is very clear on the point. It orders the recovery from both the sureties either severally or jointly to the extent of the liability or Rs. 2000/- undertaken by them. But in the notices Exs. 36 and 38 given by the Mamlatdar to the sureties he has asked each of them to produce to the extent of Rs.2000/- The Mamlatdar no doubt was right in a way, But two such different notices given to the sureties are susceptible of being interpreted that the Mamlatdar meant to recover from each of them Rs.2000/-. How-ever, it cannot be said with any degree of certainty that the Mamlatdar did in fact proceed on such a wrong basis. Now even supposing the Mamlatdar did interpret the Collector's order as complained by the sureties, still I think it was open to them to approach the Collector in that behalf and get their grievances redressed. Their action in running to the Court on this count cannot be justified. So, with respect to the learned pleader for the sureties I cannot agree with him that there was a cause for Plaintiffs for approaching a Civil Court. The Plaintiffs must therefore suffer the costs of the suit.

O r d e r.

Suit dismissed with costs.

Sd. M.M.Shirkol

22nd July, 1955.

Civil Judge, Senior Division.

the

Copied by

Compared by

Original

Copy

Application received on

Original decree ready on

Delay due to heavy woek.

Copy ready on:-

Copy delivered on:

True Copy.

~~Clerk of the Court~~.

77

Decree

(O.20,r.6,7)

In the Court of the Civil Judge,

Senior Division, Karwar.

81

Civil Suit No.86 of 1954.

Exh.No.65.

1. Devappa Krishnappa Hegde, Hindu, aged 58, ryot, resident of Mundgod.
2. Basavannappa Ningappa Ganiger, Hindu, aged 40, ryot, resident of Mundgod... ... Plffs.

versus

The State of Bombay ... ... Deft.

Claim - Rs.2305-13-9 for all purposes.

The Plffs beg to state as follows in their plaint.

1. The Plffs had stood sureties for one Satyanarayan ~~Bhat~~ Narayan Bhat, who was working as Govt Godown-keeper at Mundgod and undertook responsibility to the extent of Rs.2000/- two thousand only for his due submission of accounts and the due performance of his duties in that capacity. They executed a security bond to the Mamlatdar of Mundgod on 29th December 1949. This bond contains all the details of the ~~x~~ duties to be performed by him as godown-keeper and the circumstances under which the Plffs were to be held liable.

2. The said godown keeper was working in that capacity at Mundgod. It is alleged against him that during the period from 7-11-1948 to 5-6-1950 he did not maintain proper accounts, nor kept bill cards and correct record of test weighment, nor spedivied the results of each weighed bag, that he arbitrarily showed the shortgage on the total number of bags issued to the miller and omitted to obtain attestations of the miller or his drivers to the test weighments made at the time of issuing paddy to the mills. It is urged that he had thus caused a net loss of Rs.5360-4-2 to Govt. It appears that he was prosecuted for offences under sections 409 and 477A I.P.C., but it is learnt that the prosecution was withdrawn. It is now further learnt that his next prosecution has recently ended in his acquittal.

3. Thereafter the Collector passed an order on 1-8-1953 that the amount of loss suffered by Govt should be recovered from he said S.No Bhat and also from the Plffs to the extent of their liability undet the above mentioned

security bond. Accordingly, the Mamlatdar of Mundgod issued a notice on 4-8-1953 to each of the Plffs to produce Rs.2000/- in the Mundgod Treasury by the 12th idem. In reply each of the Plffs addressed a communication to him on 11th idem stating that he had not undertaken the liability to the extent of Rs.2000/- and that he was not found solvent for that amount. Plff 1 added that the said S.N.Bhat was on that account called upon to furnish fresh security and that in the meantime his 2 months' salary was withheld by the Mamlatdar. Plff 2 alleged that he was discharged from his liability and that the village officer had even accorded out his name as surety from the register. Each of the Plffs was informed by the Mamlatdar by his letter dated 13th iden that he was unable to do anything in the matter and that, if so advised, he should approach the Collector. Each, therefore, made a similar application to the Collector on 29-5-1953 which reached him on 2-9-1953. Plff 1 however got no reply whatever but Plff 2 got a reply on 18-1-1954 from the Collector that his liability for Rs.2000/- as surety had not ceased.

4. In the meanwhile Rs.305-13-9 were got produded from both the Plffs by the Revenue Authorities. This was done without prejudice to their contentions. In the Plff's notice to the Collector referred to hereinbelow this amount was mistakenly shown as Rs.335/-.

5. The Plffs do not admit that the said godown-keeper was guilty of the various acts of commission and omission attributed to him nor that he had caused loss to Govt and that too to the extent mentioned. Indeed he has since been acquitted of all such charges. They submit that even if he were so guilty and had caused loss to Govt, they are discharged from their obligation under their security bond, under the circumstances of the case. It was the bounden duty of the Mamlatdar and other superior officers to see that the said godown keeper was property maintaining accounts and performing all other duties regularly, without committing any such acts as are now attributed to him. These acts and omissions on the part of the superior authorities are inconsistent with the rights of the Plffs as sureties and amount to a

violation of the duty which Govt owed to them. The eventual remedy of the Plffs as sureties against the principal debtor the said godown keeper has thereby been impaired and they are therefore discharged in law from their liability under the bond. It is also learnt tha the Govt had made composition with the said S.N.Bhat and had also given him time. For these reasons also they are discharged from their liability under the bond. In any case the Plffs submit without prejudice that their liability whether individual or collective, can never exceed Rs.2000/-. In other words, the Govt will not be entitled to recover more than Rs.2000/- in all from both of them. The order of the Collector dated 1-8-53 and the notice of the Mamlatdar, Mundgod dated 4-8-1953 are therefore illegal and void and the Plffs are not in law bound by them.

6. The Plffs therefore pray that a decree be passed against the Deft granting them:

1) a declaration that the Collector's order of 1-8-1953 and the Mundgod Mamlatdar's notice of 4-8-1953 are null and void and of no legal effect, that for the reasons stated in the plaint, the Plffs are discharged from their liability under the security bond of 29-12-49 and that in any case, their liability can never exceed the limit of Rs.2000/- and a permanent injunction restraining the Deft from recovering Rs.2000/- or any part thereof ffom either or both of them.

   The valuation of this claim for the purposes of court fees is: Rs.2000-0-0

2) Refund of the amount got produced from the Plffs as stated above in plaint. The valuation of this claim is: Rs. 305-13-9

   Total - Rs.2305-13-9

and

3) Costs of this suit and such other relief as the Court may deem fit to do under the circumstances of the case.

This suit coming on this day for disposal before Shri M.M.Shirkol, LL.B.,Civil Judge,Senior Division,Karwar, in the presence of Shri V.S.Gokarn pleader for Plffs and Shri B.S.Mavinkurve Govt Pleader for Deft, it is hereby

ordered as follows.

Suit dismissed with costs.

Bill of costs.

Plaintiffs.		Defendant.	
1.Stamp for plaint	39- 1-0	Stamps,Exhs.7A,11,12,13,14, 17,23:	4- 6-0
	146-4- 0		
2.Vakilpatra Exh.3	2- 0-0		
3.Stamps Exhs.5,8,22,28,29, 33,34,35:	6- 4-0	Pleader's fees:	136- 7-0
Exhs.38,39.	1- 4-0		
4.Service of process Exhs.1,5:	12-8-0		
5.Pleader's fees:	136-7-0		
6.Copying fees,Exhs.33,34, 35.	4-5-3		
	348-1-3		140-13-0
Costs disallowed on Exhs. 22,28,29.	1-14-0	Costs disallowed on Exhs.7A,11,12,13,14:	3- 2-0
Total -	346-3-3	Total -	137-11-0

Given under my and and the seal of the Court this

22nd day of July 1955.

Sd.M.M.Shirkol,
Civil Judge,Senior Division,Karwar,
26-8-1955

Prepared by:- Sd.S.P.Naik.
Karwar.

Pleader for the Plffs: Sd.V.S.Gokarn.

Pleader for the Deft: Sd.B.S Mavinkurve.

"TRUE COPY"

Submitted

Suits :

Kanara.

For a declaration that the Collector's order dated 1st August 1953 and the Mamlatdar's notice dated 4th August 1953 calling upon the plaintiffs to pay Rs. 2,000 each to the Defendants is null and void and of no legal effect, etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

RESOLUTION NO. 15570/E.

Sachivalaya, Bombay, 19th July 1955.

Letter from the Collector of Kanara No. 4905/Estt., dated the 26th August 1954—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.

Civil Suit No. 86 of 1954.

Devappa Kaishnappa Hegde and another ... ... Plaintiffs;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Karwar, Kanara, No. 7333/E, dated the 6th April 1955—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

for J. R. DHURANDHAR,
Secretary to Government.

To.

*The A. & F. Department,
*The Collector of Kanara,
The District Government Pleader, Karwar, Kanara (with two copies of the brief).

*With a copy of the brief.

No. of 1955.

Copy forwarded for information and guidance to

CIVIL SUIT No. 86 OF 1954.

Chronological Statement of the Facts.

1. The Plaintiffs have prayed for following reliefs in this suit :—

(*a*) For a declaration that the Collector's Order dated 1st August 1953 and the Mamlatdar's notice dated 4th August 1953 calling upon the Plaintiffs to pay Rs. 2,000 each to the Defendants is null and void and of no legal effect etc.

(*b*) For a declaration that the Plaintiffs are discharged from their liability under the Security Bond dated 29th December 1949.

(*c*) For a declaration that their liability in any case cannot exceed Rs. 2,000.

(*d*) For a permanent injunction restraining the defendants from recovering Rs. 2,000 or any part thereof from either or both of the Plaintiffs.

2. One Shri Satyanarayan Narayan Bhat was appointed as Godown Keeper at Mundgod in the month of November 1948. For due and proper performance of duties as a Godown Keeper, Shri S. N. Bhat executed a personal security bond for Rs. 2,000 with the two plaintiffs as sureties. During the tenure of Shri Bhat, shortages occurred in the foodgrains in charge of Shri Bhat and as a consequence thereof, Government sustained a net loss of Rs. 5,360-4-2. The Collector of Kanara, by his order dated 1st August 1953 called upon Shri S. N. Bhat and the Plaintiffs as sureties to pay the above amount. The Mamlatdar, Mundgod consequently called upon Shri S. N. Bhat and the Plaintiffs on 4th August 1953 to pay the above amount. Shri S. N. Bhat neglected and failed to pay. It appears that Shri Bhat was not financially sufficiently solvent and hence in pursuance of a clause in the Surety Bond, the Collector of Kanara called upon the Plaintiffs to pay Rs. 2,000 each in the Government Treasury at Mundgod in terms of the Surety Bond.

3. The Plaintiffs have not accepted their liability on the ground that the Godown Keeper (Shri Bhat) was not guilty of the various acts of commission and omission attributed to him. The Plaintiffs also plead that the Mamlatdar and other Government Officers should have seen that the Godown Keeper was properly maintaining the accounts and performing his duties regularly and the failure of the Government Officers to discharge this duty had impaired the remedies of the plaintiffs against the Godown Keeper. The plaintiffs also plead that in any case their joint and total liability is Rs. 2,000 and not Rs. 4,000.

4. The Plaintiffs gave notice of suit on 9th February 1954 and filed this suit on 22nd June 1954.

Grounds of Defence.

1. The claim is not properly valued for the purpose of Court Fee and Jurisdiction. The suit is for declaration with the consequential relief of injunction and also for recovery of Rs. 300. In such a case the valuation for court fee and jurisdiction should be the same and not different. The claim should be valued at Rs. 2,310-13-9 both for court fee and jurisdiction.

2. The main basis of the suit seems to be that Shri Bhat had been acquitted in the criminal cases and hence the Plaintiffs as sureties are not liable. It

the acquittal was due to the finding of the Court that there was no dishonest criminal intention. This finding does not absolve the Godown Keeper and his sureties from the civil liability arising from the negligence and misconduct of the Godown Keeper. The Godown Keeper had a duty to take proper care of foodgrains entrusted to him and to account for every particle of grain that came to the godown. In the present case it was found that there were shortages in the quantities of foodgrains. There was no proper explanation from the Godown Keeper for these shortages. The shortages were clearly due to his negligence and slack supervision if not due to criminal misappropriation. The civil liability of the Godown Keeper and his sureties (i.e. Plaintiffs) is not, therefore, affected. As the Godown Keeper was to make good the loss to Government, the Plaintiffs have also incurred this liability.

Evidence should be led to prove the shortages by putting in the relevant registers and documents. The Inspecting Officers who found out the shortages from time to time may also be examined.

3. The Plaintiffs have asserted that there was ommission on the part of the higher authorities is not detecting the defalcation in time and that they are discharged from their obligations. The assertion may be denied and it may be urged that proper precautions were taken as per existing Account Rules and Procedure but frauds which were carefully camouflaged could not be detected early. Evidence may be led to show that all precautions were taken and the remedy of the Plaintiffs as sureties against the principal debtor (i.e. the Godown Keeper) is not impaired in law as alleged.

4. The allegation of the Plaintiffs that Government had made composition with the Godown Keeper Shri Bhat may be denied. It may also be urged that merely giving time to Shri Bhat for payment of Government dues does not amount to 'making composition' with him of his debts to Government. Attention is invited to section 135 of the Indian Contract Act. It has been held by way of interpretation of this section that the fact the Plaintiff forbears to sue the moment the debt becomes due, at the request of the debtor, does not amount to a promise to give time to the debtor so as to discharge the surety. A mere request not to sue immediately is not enough. In the present case the Collector did not expressly grant time to the debtor for payment nor did he extend the time for payment but there was inevitable delay before any effective steps could be taken for recovery, but such delays cannot operate to discharge the surety.

5. The Plaintiffs have contended that in any case the defendants are not entitled to recover more than Rs. 2,000 from either or both the Plaintiffs. It may be urged that as per the clause in the Surety Bond executed by the Plaintiffs, the Plaintiffs have bound themselves jointly and severally to forfeit the sum of Rs. 2,000 to Government and since the liability is joint and several, Government is legally competent to recover Rs. 2,000 from each of the Plaintiffs.

6. Plaintiffs have referred to the notice of suit in paragraph 6 of the Plaint (a copy of the suit notice is not included in the papers). The District Government Pleader is requested to examine the copy of the notice which must have been filed in the Court. If the notice is defective in any way, the District Government Pleader is requested to raise the necessary defences.

For the above reasons, it should be contended that the suit fails and should be dismissed with costs.

Suits:
Kanara.
For a declaration that the Collector's order dated 1st August 1953 and the Mamlatdar's notice dated 4th August 1953 calling upon the plaintiffs to pay Rs.2,000 each to the Defendants is null and void and of no legal effect, etc.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2595 1/55
Sachivalaya, Bombay, 22nd November 1955.

Read Government Resolution, Legal Department No.15570 dated the 19th July 1955.

Letter from the District Government Pleader, Karwar No.668

In the Court of the Civil Judge (Senior Division), Karwar.	dated the
Civil Suit No.86 of 1954.	25th July
Devappa Kaishnappa Hegde and another ... Plaintiffs.	
vs.	1955,
The State of Bombay. ... Defendant.	stating

that the suit noted in the margin was decided by the Civil Judge, Senior Division, Karwar on the 22nd July 1955, when the following order was passed:-

Suit dismissed with costs.

Letter from the District Government Pleader, Karwar No.839, dated the 17th September 1955, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

original. D.P. SHIKHARE 21/11
D.P. SHIKHARE,
Deputy Secretary to Government.

To
The Agriculture and Forests Department,
The Collector of ~~Karwar~~ Kanara,
The District Government Pleader, Kanara.

Physical 21/11
KUP.18/11.

Submitted for signature
T P 18/11 Subdt. 21/11
D.S(Civil)

Issued 22/11/55

586 90

Submitted.

25 Filed in S Kumara/55 (New)

T.P.
23/11

Submitted 23/11

S. Kumara/55
New
25/X'/53